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Truth and Responsibility

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Truth or responsibility—is there any excuse for lying ?

The traditional defence against charges of defamation is that the offensive statement is true and that it is in the public interest to make it known. I want to suggest that both these defences are inappropriate. In the first place, the defence of truth is not available to writers of fiction who are unfortunate enough to write of a character who can be identified, by name or otherwise, with a living person. But even more importantly, truth itself is a slippery concept. a slippery concept. It certainly cannot be identified factual accuracy. As one Queensland historian found, the recital of facts can be impeccable, but if they contain unflattering implications about any of the actors they can still be defamatory. A whole edition of his work was pulped as a consequence. On the other hand, the elements of a story can be completely fictitious yet the portrayal of a character still be considered defamatory. Tony Morphett discovered this when his wholly fictitious account of a wholly fictitious Sydney artist happened to use the name of an actual Melbourne artist. Because truth was not a defence in either of these cases, the public lost potential benefit of being able to read what the two authors had said. In both cases. I would argue that public benefit w\should override the perceived interests of particular individuals. Yet

It is not my intention, nor do I have the qualifications, to argue about the law as it stands, nor even about what it should be. Rather, I wish to argue that the kind of truth

and in criticism, is not susceptible to the tests of truth used in a law court, and that therefore the law of defamation as a whole depends on a fallacy and should be scrapped.

This suggestion seems on the face of it to run counter to the proposition that our reputation is our most precious possession. Community living depends on the acceptance of good faith among the members of our community, and so implies the right of all members of a community to be accepted as persons of good repute unless proven otherwise. Of course, we know that this does not work, and that every community inhabits a House of Fame where gossip, flattery, innuendo and dissent daily build and destroy reputations. The law of defamation is designed precisely to keep these forces within reasonable bounds. Yet even on its own terms it does not work, for it shacks only those who would diminish reputation, not those who falsely build them. It thus by its nature runs contrary to the public interest.

The issue of truth is not a separate defence, but is central to the question of the public interest. No community can go about its business unless it has an adequate understanding of its place in the world. In the small isolated communities of prehistory it did not matter is this understanding was based a false cosmology and a fantastic portrayal of remote places and peoples. In today's world erroneous science can precipitate disaster, and distorted views of our neighbours lead to such tragedies as the Gulf war. It is therefore not merely a matter of taste or convenience, but of survival, that we have access to the greatest possible array of voices talling us how they see themselves and the world. While this market place of ideas will never supply a final truth, it will help us to keep our minds open and to avoid the more egregious error. For while there may be no clear truth, there is certainly falsehood, and only debate

can reveal it.

approach to the truth. Although Brian Klernan and Helen Daniel have both described fiction in terms of beautiful lies, wheir criticism is directed towards discovering the truth that only these lies can convey. The postmodernists who see language only as an eternal dance of signifiers recognize that there is no higher truth than words to which we may appeal. Nevertheless, the writer accused of telling a deliberate lie, of being untrue either to his facts or his vision, is likely to react violently, quite possibly by himself resorting to the law for his defence. In my experience as editor, I found that the only things critics could not question about other writers were their grammar and their homesty.

My first occupation of the editorial chair of Overland was greeted with the threat of a writ from the author of a pamphlet on education. The reviewer had remarked that its contents were about 50% fact, 50% falsehood, and 100% misrepresentation, "about par for right-wing propaganda." The author's complaint was not about the rather suspect arithmetic, but about the imputation that he was a liar. Of course, legally we didn't have a leg to stand on, and we had to publish an abject apology. My only satisfaction was that our lawyer remarked that it was much less abject than he would have accorded had he been acting for the other side.

Yet the frailty of our legal position prevented a debate on a much more serious matter of substance. Despite what lawyers may say, facts have no meaning outside content. Educational debate is notorious for the competing arrays of facts trotted out for the fray by hostile commentators. Any school is such a complex microcosm of society that it is possible for two reporters to give similarly factual but utterly incompatible

accounts of what they see happening there. This is even nore true of an educational system that tries to organize all schools. It is therefore perfectly possible to claim that a factual account is nevertheless substantially false as a report of important truths of the situation. Such criticism demands a response in kind, an argument about relevance and value. The resort to law precluded such an argument, and therefore contributed, in however small a way, to the continuing confusion about the state of the nation's schools,

The language complained of needed to be understood in a political context. On the huntings or in parliament, in the secluded groves of scapeme or the public battlegrounds of business or theology, saying that your exponent is speaking untruths is not the same as calling him a lier. Company takeovers, scientific progress and electioneering depend on relating, not sere facts, but the whole substance of opposing arguments. Even in the courts, the counsel's task is to convince judge or lary that his antagonist's hold on the truth is more elender than his own. The truth that emerges from this debate is not a matter of collecting facts, but of establishing the appropriate language, discourse and theory. This is exactly what was at stake in my next encounter with the problem of defamation, while I was editing Australian Book Review.

Oueensland politics. In his review, he first explained what the book did very well, and then shifted to a discussion of what we might learn from it. As I recall, he prefaced this part of his discussion with the remark that, "in the words of Macaulay, this is not the language in which e the truth may be told." He then presented a learned and precise discussion of why this kind of political reporting did not get to the underlying truths of the Queensland, and by extension, Australian, political system. I

was very pleased with it, until I received a spine-chilling letter from a firm of Brisbane solicitors claiming that these words in the review called the author a liar, demanding an immediate apology, and warning me that at that this would mitigagte the damages, which would. "in any ewvent, be substantial".

Naturally, I was immediately on the phone to my lawyer, who advised me not to be too upset about it, that this was the hormal language used by plaintiffs and was inteneded to have exactly the effect on the offender that it had had. In my view, this lashinguage amounts to verbal assault and is the equivalent to demanding money with menaces, a far worse offence than libel. But be that as it may. I should add that other communications I have had from lawyers representing offened clients, including some from this city, have been couched in fagr more courteous and trenic therms, and have more easily achieved a resolution satisfactory to all parties. This particular issue was, however, fought out unremittingly by all parties to the fullest extent possible outside the courts.